



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/599,744	10/06/2006	Thomas Sahiri	SMB-PT184 (PC 05 196 M US	3598
3624 7590 11/07/2008 VOLPE AND KOENIG, P.C. UNITED PLAZA, SUITE 1600 30 SOUTH 17TH STREET PHILADELPHIA, PA 19103			EXAMINER GEISEL, KARA E	
			ART UNIT 2877	PAPER NUMBER
			MAIL DATE 11/07/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/599,744

**Applicant(s)**

SAHIRI ET AL.

**Examiner**

KARA E. GEISEL

**Art Unit**

2877

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 October 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date 1006, 0708
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Preliminary Amendment***

The preliminary amendment filed on October 6<sup>th</sup>, 2006, has been entered into this application.

### ***Priority***

Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d).

The certified copy has been filed on October 6<sup>th</sup>, 2006.

### ***Information Disclosure Statement***

The information disclosure statements filed on October 6<sup>th</sup>, 2006 and July 17<sup>th</sup>, 2008 have been considered by the examiner.

### ***Claim Objections***

Claims 1-16 are objected to because of the following informalities:

In regards to claim 1, line 5, "comprising" should be corrected to --comprises-- in order to make this grammatically correct.

Claim 10 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. In regards to claim 10, line 2 "the reflector, which can be set or attached detachably", it is noted that in the independent claim 1, from which this claim depends, allows the reflector to only be attached detachably, therefore, making this claim broader in scope instead of further limiting the parent claim.

Appropriate correction is required.

Claims, which are dependent on objected to claims, inherit the problems of these claims, and are also, objected to.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors. Some examples of this are:

In regards to claim 1, "in a position of use" (lines 6-7, and 12) is generally narrative; "a first device located behind the light inlet" it is not clear where behind is in relation to the rest of the device; "the light passage" of lines 13-14, there is lack of antecedent basis for this limitation within the claim, and it is not clear where the light passage is in location to the rest of the device or if it is meant by this term the area in the space where light travels.

In regards to claim 2, "wherein the receiving point can be accessed as a surface area" is generally narrative.

In regards to claim 5, "which is coupled optically with the light guide(s)", it is not clear which light guide(s) applicant is referring to, since there are two different ones or bundles claimed in claim 4.

In regards to claim 6, "formed by the boundary of the optics or lens" this is not clear since, in claim 5, the optics themselves comprise the lens; in line 4, it is not clear which light guide(s) applicant is referring to, since there are two different ones or bundles claimed in claim 4; and what is meant by "are set back relative to a top side" in line 6.

In regards to claim 7, "wherein the lens or optics" this is not clear since, in claim 5, the optics themselves comprise the lens.

In regards to claim 10, what is meant by "locked in rotation"?

In regards to claim 12, the entire claim is generally narrative and confusing.

In regards to claim 13, the entire claim is generally narrative and confusing. Is the applicant trying to describe the first and second device of claim 1?

In regards to claim 14, "standard cell" is relative, and there is no way of discerning what is meant by the standard cell. Clarification is required.

Claims, which are dependent from rejected claims inherit the problems of these claims, and are therefore also rejected under 35 U.S.C. 112, second paragraph.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-3, 8-12, and 14-16 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 9-10, and 12-18 of copending Application No. 11/995,332 (See US Pub 2008/0204755). Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims in the current application are broader in scope than the claims in '332 and can therefore, be directly read on the claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

In regards to claim 1, claim 1 of '332 discloses a device (1) for the analysis or absorption measurement of a small quantity of a liquid medium (2) using light (3), which is guided through the medium (2) and then can be detected or analyzed photometrically, spectrophotometrically, fluorometrically, or spectrofluorometrically (lines 1-5), wherein the device (1) comprising a receiving point (4) area at a top thereof in a position of use for depositing or applying the medium (2) in drops (lines 6-7), a light inlet (5) oriented horizontally in a position of use and located underneath the receiving point (4) in a housing (6) (lines 7-9), and a first device (7) located behind the light inlet (5) providing a beam path for guiding the light upwards towards the receiving point (4) (lines 9-11), the device (1) has a reflector (8), which can be attached detachably above the receiving point (4) (lines 11-12); the reflector (8) has a defined spacing from the receiving point (4) in a position of use, which is filled or can be filled by the medium (2) at least in an area of the light passage (lines 12-15); and a second device (9) is provided for guiding the light coming from the reflector (8) towards a detector (lines 15-17).

In regards to claim 2, claim 9 of '332 discloses that the receiving point (4) can be accessed as a surface area from above and the medium (2) to be analyzed can be fixed or held by a force of gravity at the receiving point (4).

In regards to claim 3, claim 10 of '332 discloses that the receiving point (4) has dimensions such that the light (3) moving through the receiving point towards the reflector (8) and reflected back from the reflector is guided at least once through the receiving point (4) and/or through the medium (2).

In regards to claim 8, claim 12 of '332 discloses that the reflector (8) is a mirror or a reflecting prism and touches the sample of the medium (2) without spacing in the position of use.

In regards to claim 9, claim 13 of '332 discloses that the measurement distance through the sample is twice as large as a spacing of the receiving surface (4) from a surface of the reflector (8) and the light travels twice through the spacing.

In regards to claim 10, claim 14 of '332 discloses that the reflector (8), which can be set or attached detachably, is locked in rotation and centered relative to the device (1) and the housing (6).

In regards to claim 11, claim 15 of '332 discloses that the spacing of the reflector (8) from the receiving point (4) is set by at least one spacer (16) between the reflector (8) and the housing (6) or a stop.

In regards to claim 12, claim 16 of '332 discloses that the device (1) has outer dimensions of a cell, which can be used in a photometer, spectrophotometer, fluorometer, or spectrofluorometer and which is struck by light therefrom, and the devices (7, 9) arranged in the interior of the device (1) for feeding or guiding light are arranged at a position in the device (1), at which inlet and outlet windows for the light (3) used for the measurement are provided in typical cells, wherein the first device (7) for guiding light directs the light emitted by a photometer towards the receiving surface (4) and the second device (9) for guiding light directs the light coming back from the measurement point towards the detector.

In regards to claim 14, claim 17 of '332 discloses that the outer dimensions of a cross section of the device (1) corresponds to those of a standard cell.

In regards to claim 15, claim 18 of '332 discloses that the outgoing light beam is aligned with the incoming light beam or encloses a right angle with the incoming beam.

In regards to claim 16, claim 17 of '332 discloses that the outer dimensions equal 12.5 mmX12.5 mm.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-2, 10, 12 and 14-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Hughes et al. (USPN 5,557,103).

In regards to claim 1, Hughes discloses a device (fig. 1) for the analysis or absorption measurement of a small quantity of a liquid medium (sample in 10) using light (14), which is guided through the medium and then can be detected or analyzed photometrically, spectrophotometrically, fluorometrically, or spectrofluorometrically (it is noted that a preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951);column 3, line 35), wherein the device comprises a receiving point (10) area at a top thereof (top is a relative term; the placement could be anywhere in the device) in a position of use for depositing or applying the medium in



Art Unit: 2877

drops (it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex Parte Masham*, 2 USPQ F.2d 1647 (1987)), a light inlet (18) oriented horizontally in a position of use and located underneath the receiving point (10; underneath is a relative term as is horizontal; the light is horizontal and the light inlet is located in a position away from the position of use thereby meeting this claim limitation) in a housing (as can be seen in fig. 1), and a first device (16) located behind the light inlet (18; again behind is a relative term and 16 is in a position away from the light inlet thereby meeting this claim limitation) providing a beam path for guiding the light upwards towards the receiving point (as can be seen in fig. 1), the device has a reflector (20), which can be attached detachably above the receiving point (the reflector is capable of being detached); the reflector (20) has a defined spacing from the receiving point (as can be seen in fig. 1) in a position of use, which is filled or can be filled by the medium (medium inside 10) at least in an area of the light passage; and a second device (24) is provided for guiding the light coming from the reflector (20) towards a detector (26).

In regards to claim 2, the receiving point (10) can be accessed as a surface area from above (the medium is placed in the receiving point from above) and the medium (inside 10) to be analyzed can be fixed or held by a force of gravity at the receiving point (inherent to this device).

In regards to claim 10, the reflector (20), which can be set or attached detachably (the mirror is capable of being set), is locked in rotation and centered relative to the device and the housing (as can be seen in fig. 1).

In regards to claim 12, the device (10) has outer dimensions of a cell (as can be seen in fig. 1), which can be used in a photometer, spectrophotometer, fluorometer, or spectrofluorometer (it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural

Art Unit: 2877

limitations. Ex Parte Masham, 2 USPQ F.2d 1647 (1987)) and which is struck by light therefrom (light 14), and the devices (18, 24) arranged in the interior of the device (fig. 1) for feeding or guiding light are arranged at a position in the device, at which inlet and outlet windows for the light (which would be located at the numerals 14 and 26) used for the measurement are provided in typical cells, wherein the first device (18) for guiding light directs the light emitted by a photometer (14) towards the receiving surface (10) and the second device (24) for guiding light directs the light coming back from the measurement point towards the detector (26).

In regards to claim 14, the outer dimensions of a cross section of the device corresponds to those of a standard cell (since it is not disclosed what a "standard cell" is, 10 meets this limitation).

In regards to claim 15, the outgoing light beam is aligned with the incoming light beam or encloses a right angle with the incoming beam (as can be seen in fig. 1 incoming and outgoing light beams are aligned).

Claims 1, 3-7, 9-12, and 14-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Doyle (USPN 5,418,615).

In regards to claim 1, Doyle discloses a device (figs. 1, 9 and 11) for the analysis or absorption measurement of a small quantity of a liquid medium (sample located in gap between 132 and 134) using light (from 30), which is guided through the medium and then can be detected or analyzed photometrically, spectrophotometrically, fluorometrically, or spectrofluorometrically (it is noted that a preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951); column 1, lines 44-60), wherein the device comprises a receiving point (gap between 132 and 134) area at a top thereof (top is a relative term; the placement could be anywhere in the device)

in a position of use for depositing or applying the medium in drops (it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex Parte Masham, 2 USPQ F.2d 1647 (1987)), a light inlet (142) oriented horizontally in a position of use and located underneath the receiving point (gap between 132 and 134; underneath is a relative term as is horizontal; the light is horizontal to the long axis of the device and the light inlet is located in a position away from the position of use thereby meeting this claim limitation) in a housing (as can be seen in fig. 11), and a first device (146) located behind the light inlet (142; again behind is a relative term and 146 is in a position away from the light inlet thereby meeting this claim limitation) providing a beam path for guiding the light upwards towards the receiving point (as can be seen in fig. 11), the device has a reflector (92), which can be attached detachably above the receiving point (the reflector is capable of being detached); the reflector (92) has a defined spacing from the receiving point (as can be seen in fig. 11) in a position of use, which is filled or can be filled by the medium (gap between 132 and 134) at least in an area of the light passage; and a second device (140) is provided for guiding the light coming from the reflector (92) towards a detector (32).

In regards to claim 3, the receiving point (gap between 132 and 134) has dimensions such that the light (via 30) moving through the receiving point towards the reflector (92) and reflected back from the reflector is guided at least once through the receiving point (gap between 132 and 134) and/or through the medium (liquid in gap between 132 and 134).

In regards to claim 4, a light guide or light-guiding fiber bundle (108) is arranged for guiding the light towards the receiving point (gap between 132 and 134) from the first device (146) and a light guide or a fiber bundle (84) for guiding the light coming from the reflector (92) and the sample is arranged between the receiving point (gap between 132 and 134) and the second device (140).

In regards to claim 5, optics (134) comprising at least one convergent lens (136), which bundles the light and which is coupled optically with the light guide(s) (84 and 108), is provided underneath the receiving point (gap between 132 and 134) for the medium (liquid in gap between 132 and 134).

In regards to claim 6, the receiving point (gap between 132 and 134) is an area recess on the top side of the device (as can be seen in fig. 9) underneath the reflector (92) and is formed by a boundary of the optics or lens (134-136) facing the receiving point or by the light guides (84 and 108) ending at the receiving point position, wherein the lens or optics (134-136) and/or the ends of the light guides (84 and 108) are set back relative to a top side (top of gap closest to 84) of a holder for the lens or optics (gap holds lens/optics) or the light guides.

In regards to claim 7, the lens or optics (134-136) coupled with the light guides (84 and 108) are simultaneously formed as a closing window of the device (as can be seen in fig. 9), on which the sample of the medium (liquid in gap between 132 and 134) to be analyzed can be applied in drops (it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex Parte Masham, 2 USPQ F.2d 1647 (1987)).

In regards to claim 10, the reflector (92), which can be set or attached detachably, is locked in rotation and centered relative to the device and the housing (as can be seen in fig. 9).

In regards to claim 11, the spacing of the reflector (92) from the receiving point (gap between 132 and 134) is set by at least one spacer (housing acts as spacer) between the reflector (92) and the housing or a stop.

In regards to claim 12, the device has outer dimensions of a cell (the gap as can be seen in fig. 11), which can be used in a photometer, spectrophotometer, fluorometer, or spectrofluorometer (it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed

Art Unit: 2877

structural limitations. Ex Parte Masham, 2 USPQ F.2d 1647 (1987)) and which is struck by light therefrom (from 30), and the devices (144-146) arranged in the interior of the device (fig. 11) for feeding or guiding light are arranged at a position in the device, at which inlet and outlet windows for the light (which would be located at the numerals 142 and 140) used for the measurement are provided in typical cells, wherein the first device (146) for guiding light directs the light emitted by a photometer (30) towards the receiving surface (gap between 132 and 134) and the second device (144) for guiding light directs the light coming back from the measurement point towards the detector (32).

In regards to claim 14, the outer dimensions of a cross section of the device corresponds to those of a standard cell (since it is not disclosed what a "standard cell" is, the gap for containing the liquid meets this limitation).

In regards to claim 15, the outgoing light beam is aligned with the incoming light beam or encloses a right angle with the incoming beam (as can be seen in fig. 11 incoming and outgoing light beams are aligned).

Claims 1, 3-4, 8-12, and 14-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Burge (USPN 7,170,608).

In regards to claim 1, Burge discloses a device (fig. 8) for the analysis or absorption measurement of a small quantity of a liquid medium (sample in 63 and column 3, lines 21-22) using light (via 50), which is guided through the medium and then can be detected or analyzed photometrically, spectrophotometrically, fluorometrically, or spectrofluorometrically (it is noted that a preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951); column 1, lines 8-10), wherein the device comprises a receiving point (63) area at a

Art Unit: 2877

top thereof (top is a relative term; the placement could be anywhere in the device) in a position of use for depositing or applying the medium in drops (it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex Parte Masham*, 2 USPQ F.2d 1647 (1987)), a light inlet (the front of the light source 50) oriented horizontally in a position of use and located underneath the receiving point (63; underneath is a relative term as is horizontal; the light is horizontal to the long axis of the device and the light inlet is located in a position away from the position of use thereby meeting this claim limitation) in a housing (as can be seen in fig. 8), and a first device (60) located behind the light inlet (the front of the light source; again, behind is a relative term and 60 is in a position after the light inlet thereby meeting this claim limitation) providing a beam path for guiding the light upwards towards the receiving point (as can be seen in fig. 8), the device has a reflector (64), which can be attached detachably above the receiving point (the reflector is capable of being detached); the reflector (64) has a defined spacing from the receiving point (column 5, lines 50-52) in a position of use, which is filled or can be filled by the medium (medium inside 63) at least in an area of the light passage; and a second device (52) is provided for guiding the light coming from the reflector (64) towards a detector (49).

In regards to claim 3, the receiving point (63) has dimensions such that the light (coming via 54) moving through the receiving point towards the reflector (64) and reflected back from the reflector is guided at least once through the receiving point (63) and/or through the medium (inherent to the device).

In regards to claim 4, a light guide or light-guiding fiber bundle (54) is arranged for guiding the light towards the receiving point (63) from the first device (60) and a light guide or a fiber bundle (53) for guiding the light coming from the reflector (64) and the sample is arranged between the receiving point (63) and the second device (52).

In regards to claim 8, the reflector (64) is a mirror or a reflecting prism and touches the sample of the medium (inside 63) without spacing in the position of use (the medium is filled in 63, thereby there is no spacing).

In regards to claim 9, the measurement distance through the sample is twice as large as a spacing of the receiving surface (63 surface away from 64) from a surface of the reflector (64) and the light travels twice through the spacing (inherent to the device).

In regards to claim 10, the reflector (64), which can be set or attached detachably (the mirror is capable of being set), is locked in rotation and centered relative to the device and the housing (as can be seen in fig. 8).

In regards to claim 11, the spacing of the reflector (64) from the receiving point (63 surface away from 64) is set by at least one spacer between the reflector and the housing (62) or a stop (the walls of the channel 63, can be considered the stop in this case).

In regards to claim 12, the device (fig. 8) has outer dimensions of a cell (which can be used in fig. 1), which can be used in a photometer, spectrophotometer, fluorometer, or spectrofluorometer (it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex Parte Masham, 2 USPQ F.2d 1647 (1987)) and which is struck by light therefrom (via 50), and the devices (52 and 60) arranged in the interior of the device (62) for feeding or guiding light are arranged at a position in the device (62), at which inlet and outlet windows for the light (windows can be broadly defined as holes which would be the holes between 50 and 60 and the hole between 49 and 52) used for the measurement are provided in typical cells, wherein the first device (60) for guiding light directs the light emitted by a photometer towards the receiving surface (50) and the second device (52) for guiding light directs the light coming back from the measurement point towards the detector (49).

In regards to claim 14, the outer dimensions of a cross section of the device corresponds to those of a standard cell (column 2, lines 61-62).

In regards to claim 15, the outgoing light beam is aligned with the incoming light beam or encloses a right angle with the incoming beam (aligned at 61).

In regards to claim 16, the outer dimensions equal 12.5 mm.times.12.5 mm (column 3, lines 21-22).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Doyle (USPN 5,418,615) in view of well known practices in the art.

In regards to claim 13, Doyle discloses the device as discussed above and further discloses that the device is comprised of glass or plastic (column 5, lines 1-5). Doyle is silent to having in the area of the light inlet (142), as a first guiding device (146), a tilted prism or a tilted mirror facing a shaft or



Art Unit: 2877

channel at a right angle to the light inlet for a light guide (108) and parallel to the guide another light guide (84) with a second tilted prism or tilted mirror, which is arranged at the opening and which lies opposite an outlet window (140) for the light or forms the window. The difference between this device and the claimed device is merely two prisms or reflective mirrors guiding the light entering and leaving the device in right angles. However, the Examiner takes Official Notice that this type of light manipulation is well known in the art, and furthermore, it is done in order to allow more flexibility in placement of the light inlets and outlets to the rest of the device. Therefore, it would have been obvious to one of ordinary skill at the time the invention was made to include two prisms or mirrors into Doyle's device in order to produce a device having in the area of the light inlet (142), as a first guiding device (146), a tilted prism or a tilted mirror facing a shaft or channel at a right angle to the light inlet for a light guide (108) and parallel to the guide another light guide (84) with a second tilted prism or tilted mirror, which is arranged at the opening and which lies opposite an outlet window (140) for the light or forms the window in order to allow more flexibility in placement of the light inlets and outlets to the rest of the device.

#### ***Additional Prior Art***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art made of record is Harwick et al. (USPN 5,438,430), Buchanan et al. (USPN 5,678,751), Tsang et al. (USPN 6,817,754), and Doyle (US Pubs 2003/0081206).

Harwick, Buchanan, Tsang and Doyle all disclose devices for the analysis of a small quantity of a liquid medium.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kara E Geisel whose telephone number is **571 272 2416**. The examiner can normally be reached on Monday through Friday, 8am to 4pm.

Art Unit: 2877

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory J. Toatley, Jr. can be reached on **571 272 2800 ext. 77**. The fax phone number for the organization where this application or proceeding is assigned is **571 273 8300**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**/Kara E Geisel/  
Primary Examiner,  
Art Unit 2877**

November 6, 2008